

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

REPUBLIC STEEL,

Defendant.

Case No. 5:22CV2163

Akron, Ohio

Thursday, May 4, 2023

10:30 a.m.

TRANSCRIPT OF FAIRNESS HEARING
BEFORE THE HONORABLE JOHN R. ADAMS
UNITED STATES DISTRICT JUDGE

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1 Thursday, May 4, 2023

2 THE COURT: For the record, the Court has before
3 it today Case Number 5:22CV2163. The case is United States
4 of America versus Republic Steel.

5 We're here today regarding a proposed consent decree.

6 Counsel for the government, are you ready to proceed,
7 and please identify yourself for the record?

8 MS. RICCI: Yes, Your Honor. Samantha Ricci for
9 the United States.

10 THE COURT: Thank you.

11 On behalf of Republic Steel.

12 MR. LEWIS: Good morning, Your Honor. John Lewis
13 for Republic Steel along with my colleague, Zach Adams.

14 THE COURT: Thank you.

15 I've read the complaint, the brief in support of the
16 consent decree, along with the various comments, the
17 exhibits which set forth comments from interested parties.

18 Counsel for the government, I'm not sure who wishes to
19 go first and provide me information in support of why it is
20 you believe I should approve the decree. You're certainly
21 free to do that. And I have many questions and many issues,
22 to be candid.

23 MS. RICCI: Yes, Your Honor. Samantha Ricci
24 again for the United States. I am prepared to go first and
25 have prepared a two-part presentation for the Court, if you

1 would like me to begin with that.

2 THE COURT: You may.

3 MS. RICCI: Okay. Thank you.

4 May I approach the podium?

5 THE COURT: Sure. You may move around the
6 courtroom. We don't have a jury, so some of the formalities
7 we can forgo.

8 MS. RICCI: Your Honor, before I begin, we have a
9 PowerPoint presentation. Is that okay with you if we run
10 that right now?

11 THE COURT: Yes.

12 MS. RICCI: Thank you.

13 The United States' presentation to the Court today is
14 going to consist of two parts to best explain the case
15 history, the proposed settlement, the compliance
16 requirements, the public comments, and the United States'
17 response to the public comments.

18 First, for Part I, you will hear from me. I was the
19 lead negotiator on the case for the United States. I will
20 be able to provide the Court with, again, a brief summary of
21 the proposed settlement, how it satisfies the standards for
22 entry, and address the public comments and the United
23 States' responses.

24 Then for Part II I have with me an EPA engineer, Mr.
25 Dakota Prentice, which I will put on direct testimony from

1 him so he can provide the Court with a timeline of the case
2 as he was the lead EPA engineer on the case. So he can
3 describe what happened from the initial inspection through
4 the settlement negotiations.

5 He can also then explain to the Court the compliance
6 requirements that are in place in the consent decree along
7 with explaining to the Court how those compliance measures
8 are adequate. And EPA is going to be able to assure that
9 through various EPA review and approval that is implemented
10 through the consent decree with each step of implementation.

11 And finally, Mr. Prentice will also be able to explain
12 to the Court the safeguards that are in place in the consent
13 decree to routinely ensure compliance after implementation.

14 Now, Your Honor, because of the serious nature of lead
15 emissions, from the beginning of the case the United States
16 diligently focussed on ensuring that adequate pollution
17 controls are installed at Republic Steel's facility to
18 prevent further excess lead emissions in the community.

19 For example, and as we mentioned in our papers, there
20 is a current state action addressing facility-wide
21 violations under the Clean Air Act at the Republic Steel
22 facility.

23 Shortly after the state initiated that case against
24 Republic Steel, EPA decided that it needed to conduct its
25 own inspection at the Republic Steel facility.

1 During that inspection, EPA identified what is called
2 the Flexcast Vacuum Tank Degasser or commonly referred to as
3 the Flexcast VTD.

4 EPA identified that unit as the most significant
5 source of lead emissions at the Republic Steel facility.
6 Therefore, we then structured our enforcement efforts and
7 the negotiations on that one source.

8 And then the United States then carved that portion
9 from the state's case and took that on as the United States'
10 enforcement action.

11 As a result, we were able to address the most
12 significant source of the problem in the most efficient way
13 possible.

14 And Your Honor, that's demonstrated by the fact that
15 the parties had an agreement in principle on the consent
16 decree terms and penalty within about one year after EPA's
17 inspection of the facility.

18 THE COURT: I'm sorry to interrupt, but I assume
19 you're going to get to the emissions, how long these
20 emissions have been ongoing, the extent of the emissions,
21 how much they exceeded the permit, things of that nature.

22 MS. RICCI: Your Honor, during the direct
23 testimony of Mr. Prentice, he will explain a lot more about
24 those types of questions you have. If you don't mind, can I
25 get -- or would you like me to --

1 THE COURT: I don't mind, but it's going to be
2 very important to let us know how long these emissions have
3 been occurring as best you know.

4 MS. RICCI: I mean, I can tell you that the
5 emissions -- the facility has not had the requisite controls
6 in place, and so ever since --

7 THE COURT: For how long?

8 MS. RICCI: Since they've operated since I
9 believe 2004 is the year that I'm aware of.

10 THE COURT: So since 2004 there have been
11 emissions exceeding the permit?

12 MS. RICCI: Well, the emissions -- they exceed
13 their permit limit when they have what's called the
14 degassing event which, again, Your Honor, my EPA engineer is
15 much more skilled at technically describing this.

16 THE COURT: So how long has this process been
17 utilized?

18 I read your papers. And I'm sorry. I'm getting right
19 to the point on some of these matters. They're important.
20 I hope you know this.

21 MS. RICCI: Absolutely.

22 THE COURT: So how long have the emissions been
23 ongoing? You describe the process that generates the
24 addition of the lead to the melting process, if that's the
25 right term, which then creates the emissions, these lead

1 emissions.

2 So how long have they been going on?

3 MS. RICCI: Your Honor, the best way I can
4 explain it to you is that it's not that it's an ongoing
5 thing. It's that when a certain event happens in the
6 process, that's not a planned event, it's more of, you know,
7 an incident that will happen occasionally during operations,
8 that is when these excess emissions occur.

9 THE COURT: So how long has Republic Steel been
10 using this process which requires them to add the lead,
11 which then creates the emissions which creates this
12 environmental concern?

13 I mean, that should be something that you should know.
14 I apologize. Let me rephrase it. That's something that I
15 certainly, the Court, should know, and hopefully the EPA
16 would know because it would have a great bearing on a whole
17 number of things in this case.

18 So how long has Republic been using this process?

19 I can look at your papers, and there is some ambiguity
20 as to how long.

21 Do you know how long they've been using the process?

22 MS. RICCI: It's my understanding that since
23 they've been operating the Flexcast VTD that these degassing
24 events occur and then these excess emissions occur.

25 So since they've been in operation. That is my

1 understanding.

2 THE COURT: So how often are they using this
3 process?

4 MS. RICCI: I --

5 THE COURT: Daily? Weekly? Monthly? Yearly?
6 Do we know, or am I getting ahead of myself?

7 MS. RICCI: Again, Your Honor, I think when I do
8 the direct testimony of Mr. Prentice, he can go through
9 discussion about these events and how EPA identified these
10 events.

11 THE COURT: You identified them in 2020, as
12 you're telling me now and your papers say.

13 MS. RICCI: Right.

14 THE COURT: And you learned of them through some
15 other ongoing matter with the Ohio EPA; is that correct?

16 MS. RICCI: We learned that there was -- we found
17 out about -- when Ohio filed their complaint, their action
18 against Republic Steel, that's when EPA did the inspection,
19 yes.

20 THE COURT: Okay. So is the inspection -- at the
21 time of the inspection, you then learned about this process
22 and these emissions?

23 MS. RICCI: Yes. Mr. Prentice witnessed this
24 process and then -- so through the inspection, and then
25 subsequent information requests, responses to those.

1 THE COURT: So how long was Republic Steel using
2 this process, this process through Flexcast VTD, which
3 includes the addition of certain alloys, as I read your
4 complaint, paragraph 32, steel is taken to the VTD where
5 additional alloys are added including lead.

6 And it's the lead, adding the lead wire to the steel
7 which as I understand it is what's triggered these lead
8 emissions, reading your complaint, paragraph 32, 33.

9 So my question is, how long has this process been used
10 or utilized by Republic Steel? Do we know?

11 MS. RICCI: In terms of how the process, how long
12 degassing events have been occurring, I know that with our
13 alleged violations in the complaint and the records that EPA
14 received, they were able to identify the number of degassing
15 events that occurred. We could identify 22 for sure and 33
16 that we are almost certain occurred.

17 THE COURT: 22 events or 33?

18 MS. RICCI: We were able to identify 22 through
19 the documents, through the records that they submitted in
20 the information request. And then, but there were 33 based
21 off of other records that we think -- well, 33 in total.

22 So 22 for certain, and 33, so an additional 11
23 more --

24 THE COURT: Beginning when?

25 MS. RICCI: Those go back to, I believe, 2020 or

1 2021. I'm sorry. I'm blanking on the exact time.

2 THE COURT: So 2021. But back to my original
3 point. Do you know when Republic Steel started utilizing
4 this Flexcast VTD and the process in which they added the
5 lead which created the emissions that are the problematic
6 emissions? Do we know when they begin doing that?

7 MS. RICCI: I do not know for certain, but again,
8 it's my understanding that that's how the leaded
9 steel-making process works. So I would -- I am going --

10 THE COURT: Isn't that part and parcel of the
11 problem, counsel? If this has been going on for many years,
12 and you don't know, or can't tell me, isn't that
13 problematic?

14 If Republic Steel has been using this process and
15 emitting lead in the air for many years unknown to the EPA,
16 isn't that something that would cause or give rise to
17 concern?

18 MS. RICCI: Absolutely, Your Honor. And that's
19 why we moved very -- as diligently -- we proceeded as
20 diligently as possible and as expeditiously as possible in
21 this case to resolve that issue once EPA became aware of it.

22 THE COURT: So why don't you know about the
23 emissions previous to 2020?

24 MS. RICCI: There were not inspections and there
25 aren't records of it.

1 THE COURT: So wasn't Republic Steel required to
2 create records or keep records to give us information about
3 those earlier emissions?

4 MS. RICCI: Yes, Your Honor. And that's also why
5 we have a claim for the failure to do, you know --

6 THE COURT: So they haven't been giving you, or
7 wasn't giving you, the information that would give us,
8 again, knowledge of how many previous emissions of lead
9 there have been in that general area? Right?

10 MS. RICCI: We do not have full history of the
11 records, correct. That's, again, why one of our claims is a
12 violation for failure to do the performance tests to
13 demonstrate that those controls are working, that's never
14 been done at the facility, and to also provide -- to do
15 accurate -- to do proper monitoring, recording and
16 recordkeeping at the facility. That's why it's part of our
17 claim.

18 THE COURT: But this is important because part
19 your claim is, what you're seeking here, is a remedy going
20 forward.

21 These are the steps that you believe should be
22 required of Republic Steel to address what is of
23 environmental concern, the release of lead into the air in
24 that community, right?

25 MS. RICCI: Correct.

1 THE COURT: But you don't have -- again, we'll
2 get there, but all the comments and the commentators have
3 talked about the harm to the community, the neighborhood,
4 all of the harm that would flow from the release of lead
5 into the air in that area.

6 MS. RICCI: Your Honor, which is why, again, we
7 moved as expeditiously as possible to prevent this from
8 occurring any further.

9 THE COURT: That's important, but what about the
10 emissions that have been ongoing for many, many years in
11 that community, the lead that's been released in the air?

12 I'm sure you've read the comments, the commentary
13 about how many schools there are in that area, how many
14 young children there are, the harm from lead into the
15 community.

16 And we don't know when it began? We don't know when
17 the emissions began, how long the lead has been released
18 into the air in that area? Is that where we're at?

19 MS. RICCI: Your Honor, I think we can assume
20 that it's been since they've been operating because they
21 have not had these controls in place.

22 THE COURT: So that means going as far back as
23 2004?

24 MS. RICCI: I believe that is the date. I have
25 that in my mind, but I can get back to you and provide that

1 to you.

2 THE COURT: So 20 years or thereabouts, or not
3 quite 20 years, we've had lead emissions into the air in the
4 neighborhood around Republic Steel?

5 MS. RICCI: I know that -- yes. I mean, 2004 is
6 when they applied for their permit to run the Flexcast VTD.
7 So yes. I can say that since 2004 they were required to
8 have these controls in place and run performance testing
9 and, you know, all related monitoring requirements. So yes.

10 THE COURT: But they haven't been running all
11 those tests as required according to this agreement.

12 MS. RICCI: They've never done a performance
13 test, no.

14 THE COURT: They've never done a performance
15 test?

16 MS. RICCI: No, Your Honor.

17 THE COURT: What would the performance test show
18 us if they had done the testing?

19 MS. RICCI: The performance test which -- so if
20 you look at what we're requiring to satisfy that claim for
21 failing to do it in our consent decree, the performance test
22 that we would require would be an EPA-approved one that
23 runs -- so after they've installed the requisite pollution
24 controls, they then run a performance test with an
25 EPA-approved method that demonstrates that the controls are

1 adequately controlling --

2 THE COURT: Weren't they supposed to be doing
3 testing all along?

4 MS. RICCI: They were required under their permit
5 to have done performance testing within six months of
6 installation and every five years thereafter.

7 THE COURT: And did they do that?

8 MS. RICCI: They did not.

9 THE COURT: They did not?

10 MS. RICCI: They have never done performance
11 testing.

12 THE COURT: Never?

13 MS. RICCI: No.

14 THE COURT: So they've been in violation of their
15 permit now for what, 20 years?

16 MS. RICCI: Yes. But the reason it only goes
17 back for five years for Claim 1, for that violation -- or
18 I'm sorry, for Claim 2, for the failure to do the
19 performance testing, is because of the statute of
20 limitations issue.

21 So we go back for five years on that claim. But ever
22 since, as we laid out in our papers, too, ever since they
23 have had that permit they have not conducted performance
24 testing.

25 THE COURT: So, again, my apologies for diverting

1 you. We'll go back to your presentation in a moment.

2 So the question that is -- in the papers it's been
3 raised by the commentators, is the harm to the surrounding
4 community. I mean, do all those folks in that neighborhood
5 know that for 20 years, thereabouts, there has been lead
6 emissions into the air? And we don't know whether
7 they've -- at what level because there has not been testing
8 done as required by the permit, right?

9 MS. RICCI: Correct.

10 THE COURT: So did the EPA think about, perhaps,
11 as part of this case, requiring notice, specific notice, not
12 just some generic notice, but specific notice to schools, to
13 homeowners, to parents, saying, by the way, this has
14 occurred, this has occurred over a period of time and there
15 has been lead emissions into the air which may affect the
16 health, safety, and welfare of the community, including your
17 children, yourselves, your homes, your soil, and we believe
18 that testing should be required. We're going to
19 require -- we're going to set up testing so that we can make
20 sure that we are doing it. We're not going to ask the State
21 of Ohio to do it. We're not going to defer. We're not
22 going to say, well, this is a matter for the Canton Public
23 Health Department or the State of Ohio. This is a matter,
24 we, EPA, we're going to see to it that there are appropriate
25 steps taken to make sure that there has not been any

1 extraordinary harm done to the community at large.

2 Has that been considered here?

3 MS. RICCI: Not that exactly. But what we did
4 do, Your Honor, is after -- as soon as we filed the notice
5 of lodging, we did community outreach of sharing a summary
6 of what the settlement entails and a history about the case
7 and then the press release.

8 And we shared that with stakeholders in the community
9 and worked with Canton Department of Health to help us
10 facilitate getting that community outreach out to the
11 members in the Canton --

12 THE COURT: So the taxpayers in Stark County
13 should be responsible then for taking the steps to try to
14 determine whether or not there has been any harm or the
15 extent of that harm from these lead emissions? Is that what
16 we're doing here?

17 MS. RICCI: No, Your Honor. I simply worked in
18 coordination with her to identify the stakeholders.

19 THE COURT: Well, doesn't the EPA have the
20 authority to step up and say we're going to require, in the
21 face of what we believe to be unlawful emissions, we're
22 going to require testing, ongoing testing of air, we're
23 going to test the soil, we're going to have these children
24 tested, we're going to have -- that kind of work done?
25 Don't you have the authority to do that?

1 MS. RICCI: Definitely EPA definitely has the
2 authority to do soil testing, Your Honor.

3 And as one of the commenters requested, that EPA do
4 conduct soil testing, we actually made that request to EPA
5 Region 5 Superfund office to, you know, go to the area in
6 Canton and do the soil testing.

7 THE COURT: Okay. What about the children? What
8 about the folks -- again, you read the papers. I mean,
9 there has been -- it's been laid out here. There has been
10 some very substantial comments made.

11 And the response to them, with all due respect, is
12 kind of we'll just brush them aside. Well, we can't really
13 apply this 990,000 to be utilized for all of the harm that
14 may have been done in the community. We can't do that. So
15 we're just not going to deal with the comments more or less.

16 Well, the comments are much broader than that. The
17 comments have asked for specifically, said, why are we not
18 providing a remedy for this past, you know, harm to the
19 community here?

20 The community -- I'm quoting from the Center for
21 Healthy Housing. "The community deserves to be protected
22 from the contamination caused by previous emissions, in
23 addition to the settlement."

24 "Although the consent decree may be expected to
25 minimize future emissions, assuming Republic Steel complies,

1 we are submitting these comments because the consent decree
2 will do nothing to address the likely contamination of homes
3 and yards caused by past emissions."

4 And, "We request that EPA conduct or require soil and
5 dust sampling and if necessary to clean up the
6 contamination."

7 They go on.

8 That's Exhibit 2, I believe. That's a fairly detailed
9 letter.

10 More detailed, and more to the point, is the comments,
11 Exhibit 3, Comment from the Community Legal Aid Services.
12 It's compelling. He outlines the neighborhood. This is a
13 poor neighborhood with primarily black children.

14 Elevated blood levels -- there is a thorough analysis
15 of the harm that flows from lead.

16 And the proposed consent -- here is the comment. And
17 you -- I'm sorry. I apologize. Don't mean to be
18 harsh -- you just brushed it aside and said, well, we can't
19 give the 990,000 to be used for any other things, and making
20 sure it goes to the government.

21 His request is the proposed consent decree should be
22 modified to ensure that funds are available to the community
23 affected by Republic Steel conduct.

24 Did you read that?

25 MS. RICCI: Yes, Your Honor.

1 THE COURT: And he spells it out here, which is
2 my concern in many ways about this decree. It says, "As
3 discussed above, average blood levels today are highest in
4 poor communities of color."

5 Do we have any dispute that the communities around
6 Republic Steel are poor communities?

7 MS. RICCI: No, we do not, Your Honor.

8 THE COURT: Is there any dispute that most of
9 them are communities of color around that area?

10 MS. RICCI: No, we do not.

11 THE COURT: So I'm sorry. But I have grave
12 concerns about what we're doing here and why it is that
13 we're not thinking about -- going forward, that's all
14 important because obviously that should be done.

15 But as I'm reading these papers and I'm hearing you
16 today, this has been ongoing for 20 years, there has been a
17 violation. I know the statute is only five years. But go
18 forward and explain to me how this consent decree addresses
19 all of those concerns as raised by the commentators and how
20 they address, again, how it is that this 990,000 is
21 reasonable in the face of what we have here before us.

22 MS. RICCI: I can turn --

23 THE COURT: Sorry to divert you, but these are
24 all the real essential issues here, counsel.

25 MS. RICCI: Absolutely.

1 I can address a couple things that you raised there.

2 As we stated in our response to comments and in our
3 motion for entry, because that \$990,000 has been designated
4 as a civil penalty, we are obligated to deposit that with
5 the United States Treasury.

6 It has been -- we are not able to go back and
7 renegotiate a penalty after it's already been determined a
8 civil penalty.

9 THE COURT: So what's the purpose of the penalty,
10 to get diverted here a little bit? So what's the purpose of
11 the penalty?

12 MS. RICCI: The purpose of the penalty here which
13 was achieved in this case is to recoup the economic benefit
14 of noncompliance which the penalty does here, and that --

15 THE COURT: How do you compute that, by the way?
16 What's the economic benefit from -- you're going to use five
17 years, but someone could say, well, it's been 20 years that
18 they've been running this process. So how do you arrive at
19 the figure of 990,000?

20 MS. RICCI: Well, so --

21 THE COURT: What's the economic benefit? What
22 process did you use to come up that 990,000 was the economic
23 benefit received by Republic Steel?

24 MS. RICCI: So the economic benefit looks at the
25 amount that defendant, you know, would have spent had they

1 been complying.

2 THE COURT: Spent on?

3 MS. RICCI: On the proper --

4 THE COURT: Compliance?

5 MS. RICCI: Yes, on the compliance controls.

6 THE COURT: So it doesn't focus on the amount of
7 profit that they made from running this process, the steel
8 that was made and sold?

9 MS. RICCI: Well, it prevents them from profiting
10 from that wrongdoing of not being in compliance.

11 And so with our civil penalty here, it recoups the
12 full economic benefit. It's actually -- the total penalty
13 is more than three times the economic benefit, Your Honor.

14 THE COURT: The economic benefit again is what?

15 MS. RICCI: The economic benefit was almost
16 270,000.

17 THE COURT: Which is? Is it -- I'm sorry. Maybe
18 I'm misunderstanding.

19 Is the economic benefit what it would have cost them
20 to comply with the law and put in place the monitoring and
21 do what needs to be done or should have been done? Is that
22 what the economic benefit is?

23 MS. RICCI: Yes, the economic benefit, yes, is
24 what they should have spent to have been in compliance.

25 THE COURT: So that's the theory. My apologies.

1 Would not a better theory be, wait a minute, you've
2 run this mill in violation of the law for we'll use your
3 five-year statute, so we want to see how much you've made
4 and what profit you've gained from running this process in
5 violation of the law?

6 Would that not be a more appropriate measure when you
7 talk about a penalty? Right?

8 Would that not be more appropriate, rather than say
9 we're just going to fine you for doing what you should have
10 done anyway to comply with the law?

11 MS. RICCI: Well, Your Honor, that's why the --

12 THE COURT: What kind of penalty is that?

13 MS. RICCI: That's why the penalty has more
14 components than just the economic benefit, right.

15 So in this case, again, the civil penalty is more than
16 three times the economic benefit. And courts have affirmed
17 that a penalty that is two to three times the economic
18 benefit is sufficient because that achieves the necessary
19 punishment and deterrent effect.

20 THE COURT: Really? So what's the gross revenue
21 of Republic Steel every year? Or what was it in 2020, do we
22 know?

23 MS. RICCI: I do not know that, Your Honor.

24 THE COURT: Millions? Hundreds of millions?

25 MS. RICCI: I do not know that, Your Honor.

1 THE COURT: So we didn't think about that when we
2 think about 990,000 as a penalty and how effective that's
3 going to be as a deterrent?

4 MS. RICCI: We thought about things such as the
5 size of the violator. We thought about -- those -- so other
6 penalty factors that go into it, right, so the gravity, the
7 length of the violation, the seriousness of the harm. That
8 made up the other two-thirds of the penalty.

9 So really the economic benefit is just one-third. And
10 then the other two-thirds are all those other factors that
11 went into the calculation to arrive at what the penalty is,
12 the civil penalty is.

13 THE COURT: Okay. And you think this will have a
14 deterrent effect on others who wish to pollute or may
15 pollute or may not comply with their monitoring
16 requirements, etcetera?

17 MS. RICCI: I think based off of the Clean Air
18 Act penalty policy, I think yes.

19 THE COURT: So you made no effort to see what may
20 have been the economic benefit?

21 We will disagree as to what that standard should be,
22 the economic benefit, meaning how much money is Republic
23 Steel making out of this mill if they're running this
24 process and they're doing it and emitting lead into the
25 community?

1 Do we not want -- do we not want to know what their
2 profits may be, what their profit margin is on that plant?

3 MS. RICCI: Your Honor, we did the economic
4 benefit analysis as it's laid out for us to do under Clean
5 Air Act and EPA penalty policy and the Clean Air Act
6 statutory guidance for its policy.

7 THE COURT: That doesn't bind me, does it?
8 That's your policy. That doesn't bind the Court in making a
9 final determination about whether this is reasonable and
10 meets all the appropriate standards.

11 MS. RICCI: Again, because the penalty recovers
12 more than three times the economic benefit, we believe that
13 that is sufficient. And courts have affirmed that a penalty
14 that is two times the economic benefit is sufficient.

15 THE COURT: Well, what is the penalty? What's
16 the daily penalty?

17 According to your papers it could be as much as what,
18 \$100,000 a day or more?

19 MS. RICCI: For a violation, correct, that's
20 under the Clean Air Act and with inflation.

21 THE COURT: So here how many days was there a
22 violation?

23 MS. RICCI: So for Claim 1, we alleged -- we did
24 a calculation of the, again, the 22 degassing events that we
25 had data for over a four to six month period, and we ran

1 that for the five years going back.

2 THE COURT: So how much per day then was the
3 penalty?

4 MS. RICCI: In that calculation, Your Honor, I do
5 not have that information in front of me.

6 THE COURT: Well, if I took the \$990,000 and
7 broke that down, how would this break out? How much per day
8 if I were to use that number?

9 MS. RICCI: I am not sure.

10 THE COURT: I don't have a calculator, I'm not
11 real quick at math, but if I broke it down to what, 22
12 emissions and 990,000, divide that up, or 33 emissions and
13 divide that up, how much would that be per day?

14 We can do the math. It's not that much, is it?

15 MS. RICCI: I'm sorry, Your Honor. I do not have
16 that calculation.

17 THE COURT: Well, you can impose up to
18 125 -- according to your papers, \$125,000 a day or
19 thereabouts, right?

20 MS. RICCI: Under the Clean Air Act penalty
21 policy. But Your Honor, this was a settlement. And
22 typically when you're negotiating penalty and consent decree
23 to avoid litigation and the uncertainty that's involved in
24 litigation, the penalty is going to be much lower than
25 what's in the Clean Air Act penalty, under the statute under

1 the Clean Air Act.

2 THE COURT: It's \$109,000 per violation per day
3 for each day the violation occurred. That was after
4 November 2, 2015, according to your papers.

5 I'm sorry. Go ahead.

6 MS. RICCI: As I was saying, Your Honor, there
7 are three claims in the United States' complaint. They are
8 all related to that Flexcast VTD unit. They're resolved by
9 stringent EPA compliances that have those approvals for each
10 place -- or each step in the consent decree.

11 I would like the court to know that throughout the
12 negotiations, the United States insisted upon a number of
13 non-negotiables in the settlement.

14 We insisted that there was a timely schedule for
15 implementation and that those rigorous EPA approvals were
16 incorporated in each step which, during the direct testimony
17 of Mr. Prentice I will pull that up and show you, show the
18 Court how that plays out.

19 And the United States insisted upon EPA-approved
20 performance testing of those controls, and that they must do
21 that performance testing during the operations with the
22 highest lead emissions which were what we were discussing
23 earlier, those degassing events.

24 And finally, the United States insisted that the
25 parameters that EPA approves for how the controls are

1 operated, that they must be incorporated into Republic
2 Steel's Clean Air Act permits in order to ensure compliance
3 even long after the consent decree is terminated.

4 Now, Your Honor, the settlement properly addresses all
5 of the violations. It resolves the United States' claims.
6 It secures an adequate civil penalty for Republic Steel's
7 violations.

8 And Your Honor, I would like to mention that even two
9 out of the three of the public commenters supported
10 settlement and expressed that they wanted the consent decree
11 to be entered.

12 THE COURT: Is that how you read it?

13 MS. RICCI: If you look at the National Center
14 for Healthy Housing, they led their comment, at the very
15 beginning of their comment, Your Honor, they said, you know,
16 none of the comments below should preclude entry of this
17 settlement.

18 And the mayor's comment, he thanked us for our work
19 and thanked us for the proposed settlement. And his was
20 more of a question of asking us if any of the penalty money
21 could go back into the community.

22 So I would say that, yes, one of the commenters
23 directly said their comments should not preclude entry.

24 And I think the mayor, by thanking us for our work and
25 the settlement and saying he didn't have a comment but he

1 had a question, I would interpret that to mean that he would
2 want the consent decree to be entered.

3 THE COURT: Well, the Center for Healthy
4 Housing -- we can debate it back and forth -- yes, they say
5 the consent decree, obviously they agree that it should be
6 entered. None of the comments should delay the entering of
7 the consent decree, however -- they qualify that, and what I
8 think is an important qualification. "Although the consent
9 decree may be expected to minimize future emissions," and
10 I'm quoting, "assuming Republic Steel complies, we are
11 submitting these comments because the consent decree will do
12 nothing to address the likely contamination of homes and
13 yards caused by past emissions. The community deserves to
14 be protected from contamination caused by previous
15 emissions, in addition to this settlement."

16 So they're not satisfied with the terms of the consent
17 decree. They're noting that, indeed, going forward Republic
18 should do what it's required to do and has been required to
19 do, and that is monitor, right, the emissions?

20 But they're not satisfied with the decree, nor is the
21 other group that I think does an outstanding job of calling
22 to all of our attention the problem here, Community Legal
23 Aid.

24 They simply state -- they're asking that the 990,000
25 be diverted for causes related to the contamination. But

1 generally speaking, their position is that more needs to be
2 done. They're asking it to be modified. They're not asking
3 it to be entered. They said it should be modified to ensure
4 that funds are available to the community affected by
5 Republic Steel's conduct.

6 So to say that they all support the entry of the
7 decree is a bit of a stretch.

8 As far as the mayor, I don't know what the mayor knows
9 or doesn't know, to be frank with you, about this and this
10 whole process, how much, again, consultation has been
11 undertaken. So I don't know the answer to that question.

12 And I don't know how many people are fully aware of
13 what gives rise to this settlement. I would be curious to
14 know whether all of these stakeholders -- after today's
15 hearing, maybe they will know more about how long this has
16 been ongoing.

17 I mean, do they know that arguably this has been,
18 these emissions have been ongoing into the community for 20
19 years? Are they aware of that?

20 MS. RICCI: In our complaint, Your Honor, we
21 state that they have had this permit, Republic Steel's Clean
22 Air Act permit has been in place since 2004 and they have
23 not had compliance or run performance testing. So that's in
24 our papers.

25 THE COURT: Counsel, a layman who reads this or a

1 homeowner, or even a teacher at a school, would not know.
2 It is not directly -- does not directly state in layman's
3 terms where a layman or someone unschooled in the law would
4 know that what's been going on here has been ongoing for 20
5 years, a violation of their permit, as you've laid out for
6 me here.

7 They've not been monitoring this. And they've been
8 emitting this lead into the community, arguably, according
9 to you, for decades now, to the community.

10 And you first discovered it -- when I say "you," the
11 EPA first discovers it in 2020.

12 And so you can go forward, but the issue is here, as I
13 see it, is not what we're doing going forward, because
14 that's what the consent decree addresses, is what needs to
15 be done to remedy these past violations, meaning to prevent
16 this from continuing to occur.

17 But the problem is, is that what you have proposed
18 here -- two issues.

19 Number one, is the economic -- the penalty sufficient
20 to address these violations? Is \$990,000, looking at the
21 statute, the amounts available to you, the nature of the
22 violation and the harm, is that adequate? Number one.

23 Number two is, have you put in place or have you
24 negotiated remedies to address the harm to the community
25 there in the face of a poor community of color, individuals

1 in that whole neighborhood that have been adversely impacted
2 for years?

3 MS. RICCI: To your first --

4 THE COURT: I mean, someone could do studies, if
5 someone really wanted to delve into that, and say let's take
6 a look at past performance in the schools in that community,
7 in that area. Is it possible that some of these children
8 who have learning disabilities, is it possible that some of
9 that may have been a result of exposure to lead?

10 I mean, 20 years is a long time. Even five years.

11 Has the EPA done any of those kind of things? Have
12 you done studies? Have you done anything to try to see what
13 harm may have flowed from all of this?

14 MS. RICCI: I am not aware of any, Your Honor.

15 THE COURT: Suppose I'm a homeowner in this
16 community and it becomes apparent -- I learn that my home
17 and my neighborhood has been exposed to lead, lead exposure
18 now for the past we'll use five years.

19 So I decide I want to sell my home. Well, I'm
20 required under Ohio law to use a real estate disclosure
21 form. Now, do I have to disclose to the future buyers that
22 my home has been exposed to lead or there has been airborne
23 lead contaminants in the air for the past five years or
24 maybe even more?

25 So what do you think that does to the value of their

1 house when a prospective buyer looks at the disclosure form
2 and says, hmm, there has been lead in this area, in this
3 property.

4 Now, what does that do to the value of those
5 properties, do you think?

6 MS. RICCI: Your Honor, I am not sure, but I
7 think --

8 THE COURT: Well, then maybe the EPA might think
9 about, well, gee, do we have available the ability to remedy
10 those harms or to require Republic Steel to do that, to
11 require some remedy for the depreciation in the value of
12 those homes along with the possible risk of health, harm to
13 the children? And the others? Not just the children, the
14 elderly is part of this process, too, right?

15 MS. RICCI: Yes, Your Honor.

16 I just -- I want to mention, though, that our focus in
17 this case, which is clear by the timeline that we moved, was
18 really to prevent these emissions from occurring.

19 THE COURT: Going forward.

20 MS. RICCI: Correct. And in order to do that,
21 we, again, negotiated swiftly, got a consent decree in
22 place, negotiated a civil penalty, and moved for entry so we
23 can get those controls in place.

24 THE COURT: That's fine, counsel, but that
25 doesn't preclude you -- they're required by law at this

1 point, by their permit, to be doing this ongoing monitoring
2 irrespective of the consent decree.

3 Yes, you've put in place some stringent requirements.
4 But they've been required to do this all along and have not
5 done it, according to you and according to the settlement.

6 So that's sort of something hopefully they're doing
7 now as they're required to do.

8 But part of the process is, part of, I would think, in
9 these cases -- and hopefully, there is others that are out
10 there, hopefully part of the process is going to be to make
11 sure, to promote the public health and welfare.

12 That's part and parcel of what's gone on here in the
13 past. Part and parcel of protecting the health and welfare
14 is to say a couple of things, that the penalty is going to
15 be sufficient to be a deterrent, number one.

16 And number two, as your complaint says, the standard
17 was established to provide public health protection,
18 including the health of sensitive populations such as
19 asthmatics, children, and the elderly. That's paragraph 12
20 of your complaint.

21 And now we have to ask ourselves, we've got
22 information provided to you by the commentary, or comments,
23 that there is concerns about health, safety, and welfare of
24 that community.

25 And the EPA, as I read it, you're just choosing to

1 punt on that. That's, well, maybe somebody else will deal
2 with that. That's how I read your papers, is saying maybe
3 that will be addressed by someone else or maybe we'll
4 address it in the future.

5 Am I mistaken?

6 MS. RICCI: Your Honor, we, again focused on the
7 most significant source and the concern, stopping those
8 excess emissions.

9 And no. We're not saying that we maybe will. We are
10 saying that entry of the consent decree is not going
11 to -- it doesn't limit our ability to enforce any additional
12 violations. And it doesn't limit any of the programs that
13 are in place or any of the other options that are in place
14 to address health concerns.

15 THE COURT: So why not do it now? Why not say,
16 look, as part and parcel of this, we now know of these
17 violations. We know that there had been lead emissions made
18 into the air in that community. We know it's been for at
19 least five years. Even though the statute is five years, we
20 know it's been ongoing possibly for as long as 20 years. We
21 know all of that.

22 And so as part of this we are going to require you,
23 Republic Steel, to step up to the plate and do the things
24 that need to be done to protect and mitigate the possible
25 harm to the community and that area, that poor community of

1 color.

2 Who speaks for them? Does the EPA speak for them or
3 not?

4 MS. RICCI: The EPA, their mission is to protect
5 public health and the environment.

6 THE COURT: Right. So who is going to speak for
7 them in terms of what's happened here and the harm that's
8 been visited on that community?

9 Is anybody going to speak for them but for the
10 commentators we've had come here?

11 I'm going to take a break, and you can gather your
12 thoughts and decide how you're going to proceed with this
13 matter.

14 I'm sorry, but I've read all these papers. I read
15 them repeatedly. And I've looked this over and I just
16 cannot -- quite frankly, those issues are first and foremost
17 in my mind.

18 We'll take about 15 minutes.

19 Thank you very much.

20 (Recess taken, 11:15 a.m. until 11:30 a.m.)

21 THE COURT: All right, counsel. Go ahead,
22 please.

23 MS. RICCI: Thank you, Your Honor.

24 I next wanted to do the direct examination of the EPA
25 engineer, Mr. Dakota Prentice. I think by doing that you

1 will see that the settlement contains measures that go
2 beyond Republic Steel's requirements under their Clean Air
3 Act and under their permit. So it will show you how the
4 settlement further is in the public interest because it's
5 more than just what they're required to do under the
6 statute. It requires more of them.

7 And he can also answer some of the technical questions
8 that I wasn't able to articulate as well as he absolutely
9 can.

10 But before I do that, it's my understanding that
11 Republic Steel's counsel would like to address a few points
12 from earlier.

13 THE COURT: We'll do it one at a time. You can
14 complete your presentation. Then I'll hear from Republic
15 Steel. They can make their presentation. I think that's a
16 little more organized, please, for me.

17 MS. RICCI: That sounds great.

18 Your Honor, then if I may, may I please call Mr.
19 Dakota Prentice to the witness stand.

20 THE COURT: Sure, you may.

21 Sir, if you'd approach the witness stand and please
22 remain standing while I administer the oath or affirmation.

23 DAKOTA PRENTICE,

24 of lawful age, a witness called by the United States,
25 being first duly placed under oath, was examined

1 and testified as follows:

2 THE COURT: Sir, have a seat in the witness
3 stand, if you would, please. Adjust the microphone so your
4 testimony can be heard.

5 Thank you.

6 Counsel, you my inquire.

7 DIRECT EXAMINATION OF DAKOTA PRENTICE

8 BY MS. RICCI:

9 Q. Mr. Prentice, let's start off by discussing your
10 background. What is your education background?

11 A. Sure. I have a Bachelor's Degree in Chemical
12 Engineering from the University of Illinois.

13 Following that I went to Northwestern for a Master's
14 Degree in Environmental Engineering.

15 Q. What is your engineering work experience?

16 A. From 2003 for 2011 I worked for a company called
17 Pioneer Engineering doing general environmental consulting.
18 And from 2011 to today I've been with the EPA.

19 Q. What is your current role at EPA?

20 A. I am a Clean Air Act stationary source inspector.

21 Q. What region are you in at EPA?

22 A. Region 5.

23 Q. And what area does Region 5 cover?

24 A. We cover six states, including Ohio.

25 Q. And how many air inspectors are there in your

1 particular branch of the EPA?

2 A. I'm one of 30 inspectors for Region 5.

3 Q. And what do you do in your current role as a Clean Air
4 Act inspector?

5 A. As an inspector, I visit facilities and I work to
6 determine if they are in compliance with their permit and
7 any other regulations that they're subject to.

8 Q. How many inspections have you conducted as a Clean Air
9 Act inspector at EPA?

10 A. A few hundred.

11 Q. Mr. Prentice, have you inspected the Republic Steel
12 Canton facility?

13 A. Yes, I have.

14 Q. And what type of facility is the Republic Steel
15 facility?

16 A. It is a steel mill, like a mini mill as we refer to
17 them, that produces various grades of steel, including a
18 leaded steel alloy.

19 Q. And what's leaded steel?

20 A. Leaded steel is an alloy of steel. Republic adds a
21 certain amount of lead to the steel to meet the specs that
22 their customers need.

23 Q. And are there emissions from the leaded steelmaking
24 process?

25 A. There are, yes.

1 Q. What emissions result from this process?

2 A. Emissions that you would see at any other steel mill,
3 but with Republic, there is the addition of lead because
4 they're producing a leaded alloy.

5 Q. And how is this process for leaded steelmaking
6 regulated?

7 A. They have a permit-to-install issued by Ohio EPA.
8 That was from 2004.

9 Q. And what are some of the requirements in Republic
10 Steel's permit-to-install?

11 A. They have lead emission limits, and then they have
12 testing requirements and monitoring requirements as well.

13 Q. Now, who joined you in conducting that inspection of
14 the Republic Steel facility?

15 A. I was joined by David Sutlin, another EPA inspector.

16 Q. And when did that inspection occur?

17 A. That was in September of 2021.

18 Q. And what did you observe during the inspection?

19 A. We observed steel production, sort of from the
20 beginning to the end.

21 We also observed, at a vacuum tank degasser, we
22 observed the production of leaded steel. That's the unit
23 where lead is added to the molten steel.

24 And we also observed a degassing event.

25 Q. Okay. Thank you.

1 So here on the PowerPoint you'll see this is a diagram
2 of a Flexcast VTD. This isn't exactly Republic Steel's, but
3 this is a diagram of what one looks like.

4 So let's discuss the VTD and the steelmaking process,
5 Mr. Prentice.

6 Can you explain how the steelmaking process works?

7 A. Sure. So at the vacuum tank degasser, this is a unit
8 that Republic uses to remove impurities from the molten
9 steel, which would be dissolved gases.

10 So a ladle of molten steel moves to the VTD. It is
11 placed within it.

12 The top is then put back on, and a vacuum is induced
13 within the unit.

14 While the vacuum is being induced, argon gas is being
15 bubbled through the steel. The argon gas works to mix the
16 steel.

17 And due to that low pressure within the VTD, these
18 dissolved gasses are removed from the steel, increasing the
19 quality of the steel.

20 This is also the point where sort of at the end of the
21 VTD cycle, lead is introduced to the molten steel for the
22 first time.

23 And any emissions from this process go out on the left
24 side there where it says "to vacuum pump." That's how the
25 emissions leave the system.

1 Q. And you mentioned degassing events. What are
2 degassing events?

3 A. So if -- once the leaded steel has been produced, they
4 want to go and cast that next.

5 If the lead has already been introduced to the steel
6 but there is a problem downstream that prevents them from
7 casting it, that steel begins to cool fairly quickly. And
8 after a certain temperature drop, they can no longer cast
9 that steel.

10 That steel has to be reheated. And before they reheat
11 that, that ladle of steel, of the leaded steel, it's brought
12 back to the vacuum tank degasser. It's brought under vacuum
13 again. And that lead is sort of vaporized or boiled off to
14 some degree.

15 But it's removed from the steel and is routed through
16 the emission control system at the VTD.

17 Q. And is this here on the screen, that's where you're
18 discussing that it gets routed to, correct?

19 A. Right. And this is not exactly how Republic's system
20 is set up but it gives the general idea here.

21 Q. And can you explain what happens here when it's
22 emitted through?

23 THE COURT: You can touch the screen, sir, if you
24 want, and that will give me some indication of what's
25 transpiring.

1 THE WITNESS: Sure. All right. So the gas is
2 coming out of the -- let's see. I'm trying to touch but
3 it's not working.

4 THE COURT: I'm sorry. It's not working, the
5 technology. Apparently we're having a problem.

6 Go ahead. You can describe it.

7 THE WITNESS: All right. So the emissions that
8 are coming out of the VTD, they're coming into this
9 first -- it's described as W-Booster on the upper left side.
10 It's coming into the left side of that unit.

11 This is described as a booster here, but it's a steam
12 ejector. And Republic uses steam ejectors to induce the
13 vacuum within the VTD.

14 And the steam is brought into the ejector, and it
15 pulls on the contents of the VTD. And that's how the vacuum
16 is induced.

17 But the emissions coming off of the VTD, they enter
18 that steam ejector, and they become mixed with the steam
19 that's creating the vacuum.

20 So now we have this mixed stream moving through a
21 series of ejectors, steam ejectors. And they eventually
22 will move to condensers. At the condenser, they try to get
23 that steam to drop out as water.

24 And so at the condenser we'll see a split. We'll have
25 water drop out, and we'll have gas leave the condenser.

1 The water, though, has been in contact with the
2 emissions from the VTD. And so that will be a leaded water
3 at that point.

4 So we have leaded water, or lead impacted water,
5 dropping out, showing -- moving to the hot well.

6 From the hot well, that water is pumped to the cooling
7 tower so it can be cooled and then recirculated.

8 But at the cooling tower there are emissions. So that
9 leaded water results in the cooling tower being a lead
10 emission source.

11 And then separately, the gas stream that's not
12 condensed at the condenser will eventually move up and out
13 of the system through the vacuum tank degasser stack.

14 Q. Thank you for explaining that in much better detail
15 than I could.

16 Were there any additional follow-ups with Republic
17 Steel after your inspection?

18 A. After the inspection we followed up with an
19 information request, and followed that up with a notice of
20 violation.

21 Q. And how did the inspection or the information request
22 focus EPA's enforcement action in this matter?

23 A. Based on what we saw we were very focused on the VTD
24 because it seemed to be the primary source of lead emissions
25 from the facility.

1 Q. And so you said then EPA issued a notice of violation.
2 What were the claims in the notice of violation that
3 EPA issued to Republic Steel?

4 A. Yeah, so we alleged that they, during the degassing
5 events, that they would be exceeding their lead emission
6 limit. But only during these degassing events.

7 And then second, that they failed to ever conduct a
8 performance test to show that they were in compliance with
9 their lead emission limits.

10 And three, that based on some records we obtained,
11 that the facility was failing to conduct the required
12 monitoring per the permit.

13 Q. And why are there only claims that are related to the
14 VTD?

15 A. Because, again, that was what we thought -- we viewed
16 it as the most significant lead emission source. And other
17 portions of the facility had been dealt with by the state
18 through various other orders.

19 Q. So you issued the NOV, and then you had what's called
20 an NOV conference and discussed that, the notice of
21 violation with Republic Steel.

22 What occurred during that conference?

23 A. At that conference Republic proposed two projects to
24 reduce lead emissions.

25 They proposed improvements to the VTD stack. This

1 would be where the gas stream exits and is an emission from
2 the VTD.

3 They proposed adding a demister, or a cyclone,
4 followed by a HEPA filtration system.

5 And then separate from that, they proposed
6 improvements to the cooling tower through upgraded demisters
7 using a more modern technology and variable speed fans.

8 Q. And the upgrades to the cooling tower are separate
9 from the VTD requirements?

10 A. Correct.

11 Q. And what did EPA think about these proposed projects?

12 A. We thought they were good projects, and it appeared
13 that they would significantly reduce lead emissions from the
14 facility.

15 Q. And when the government started negotiating this case
16 with Republic Steel, what was the government case team's
17 overall negotiation objective?

18 A. We wanted those improvements to the facility to be
19 implemented as soon as possible to reduce lead impacts from
20 the facility, and we wanted a series of steps and safeguards
21 in place so that we knew it would happen in a timely manner
22 and that it would be done appropriately, and then to get a
23 penalty for the violations that we alleged.

24 Q. And did the government case team negotiate a proposed
25 consent decree that would achieve those objectives?

1 A. Yes.

2 Q. Now, let's go over the compliance assurance features
3 that are in the proposed consent decree.

4 What are the compliance requirements that address each
5 violation?

6 A. So for the exceedance of the lead emission limit, the
7 implementation of the new control technology, the demister
8 and HEPA filter, we believe will resolve that claim.

9 And then we have the claim for the failure to conduct
10 a performance test. Well, after they add the demister and
11 HEPA filter system, they'll be required to conduct a
12 performance test so that we know that they are in compliance
13 with their lead emission limit.

14 And then for the failure to conduct appropriate
15 monitoring of operations, they will be required to have a
16 compliance management system which will have electronic
17 monitoring recordkeeping and notification for the facility.

18 Q. And are there additional compliance requirements to
19 address lead emissions that are separate from the
20 violations?

21 A. Yes. This would include the improvement to the
22 cooling tower, the addition of -- or the replacement of the
23 old demisters with a more modern demister technology, and
24 the variable speed fans. That cooling tower project is an
25 additional project.

1 They're also required to implement some electronic
2 monitoring of a separate baghouse that does control a lead
3 emission source associated with casting of leaded steel.

4 And then if they -- they also have another portion of
5 the plant referred to as the CBCF. They have the ability,
6 through their permit, to produce leaded steel in that part
7 of the plant as well. They're currently not doing that, but
8 if they were to do that at a future date, they are required
9 to notify us of that.

10 Q. And what mechanisms are in place in the consent decree
11 so that EPA can verify the effectiveness of these compliance
12 requirements?

13 A. We have a series of timelines and report submittals
14 and protocols that we need to see and approve as these
15 projects move forward.

16 Q. So as an example, I would like to walk through the
17 provisions on the upgrades to specifically the Flexcast VTD
18 emission control system. And this really will then
19 highlight the EPA review and approval process that you just
20 mentioned.

21 So I have here on the screen --

22 MS. RICCI: Your Honor, this is ECF docket 2-1.
23 It's the proposed consent decree.

24 BY MS. RICCI:

25 Q. And so I want to focus on the Compliance Requirements

1 section starting with paragraph 12.

2 So the first provision here requires Republic Steel to
3 install and operate the inertial separator and the HEPA
4 filter at the Flexcast VTD.

5 Let's focus here on paragraph 12A which states that
6 within 60 days of the effective date, defendant shall submit
7 to EPA for review and approval the Flexcast VTD control plan
8 that describes the pollution control system at the Flexcast
9 VTD, including the inertial separator and the HEPA filter,
10 and obtain EPA's approval of the overall control efficiency
11 of the pollution control equipment prior to installation.

12 Mr. Prentice, please explain what the control
13 efficiency is and why EPA wants to approve this prior to
14 installation.

15 A. The control efficiency is how well a piece of control
16 equipment will remove a specific contaminant or pollutant as
17 that gas stream moves through it.

18 And that helps us understand what we should expect
19 when that piece of equipment is placed in operation.

20 Q. And why does EPA want to approve this before
21 installation?

22 A. We want to ensure that what is implemented will bring
23 them into compliance with their lead emission limit.

24 Q. Okay. So moving now to 12B.

25 It states here that defendant shall install and

1 commence operation of the inertial separator and HEPA filter
2 at the Flexcast VTD at the facility to aid in the control of
3 lead emissions from the Flexcast VTD. The system shall be
4 consistent with the Flexcast VTD control plan prescribed in
5 the prior paragraph 12A.

6 This may be obvious, but what's the purpose of EPA
7 requiring this provision?

8 A. So once the what we believe is good control equipment
9 has been proposed and we have approved it, we want them to
10 move ahead with installing and operating it as soon as
11 possible.

12 Q. So then we move to the third stop. That's paragraph
13 13, and this is the Compliance Demonstration Protocol.

14 And this requires that no later than 30 days after the
15 installation and commencement of operation of that inertial
16 separator and HEPA filter at the Flexcast VTD, defendant
17 shall submit to EPA for review and approval, a compliance
18 demonstration protocol for the Flexcast VTD emission control
19 system.

20 Mr. Prentice, can you please explain what this
21 compliance demonstration protocol is and how it will ensure
22 compliance?

23 A. So the protocol will lay out the specific test methods
24 that will be used and the operating scenario that the tests
25 will be conducted under.

1 And specifically for us we want to ensure that this
2 control equipment is tested under a worst case scenario.
3 For us this would be degassing. We want to know that if
4 this event occurs in the future when this control equipment
5 is in place, that we feel confident that they will be
6 meeting their lead emission limit.

7 Q. And so EPA required this to ensure that, like you
8 said, the controls are operating effectively during the
9 times where there are the highest lead emissions from the
10 production?

11 A. Correct.

12 Q. And then if you move to paragraph 14, this requires
13 Commencement and Completion of Compliance Demonstration.

14 Can you explain this step?

15 A. So once we have approved the protocol, we want them to
16 move ahead with that test as soon as possible so that we
17 know everything is working properly.

18 Q. And how does -- okay. And then the next provision,
19 paragraph 15, this is the Compliance Demonstration Report.

20 This report requires Republic to describe the
21 conditions under which -- under which the compliance
22 demonstration was carried out and the result of the
23 performance testing that you described that has to occur
24 under degassing and all the steps taken to comply with the
25 compliance demonstration protocol as well as submitting the

1 operating parameters to EPA for review and approval.

2 Mr. Prentice, how does the compliance demonstration
3 report help EPA verify the effectiveness and proper
4 functioning at the VTD emission controls?

5 A. So we need to be sure that the actual test was
6 conducted as we approved in the protocol, so that the test
7 methods were performed appropriately and the operating
8 scenario that we asked for was also what occurred during
9 testing. This would be the worst case operating scenario,
10 like a degassing event.

11 And if that is done appropriately and they are shown
12 to be in compliance with their lead emission limit, that
13 allows them to establish operating parameters to demonstrate
14 continuous compliance moving forward.

15 Q. And what are operating parameters?

16 A. Operating parameters are a physical characteristic of
17 a system that's easily measured. And that whatever that is,
18 whatever is monitored, if you are in that range moving
19 forward, once that range is established, that allows us to
20 know that that equipment is operating properly and
21 consistent with how it demonstrated compliance during the
22 performance test.

23 Q. So we just walked through just a portion of the
24 compliance requirements in the consent decree.

25 But there are similar provisions for EPA review and

1 approval that mimic what we just went through here
2 throughout the Compliance Requirements section for other
3 measures such as that cooling tower and the compliance
4 management system. Correct?

5 A. Correct.

6 Q. And what are the compliance assurance measures to
7 ensure proper operation of the controls after they've been
8 installed and after they've been tested?

9 A. So once that is all established, they'll have to be
10 operating under their operating parameters. Any deviation
11 from those, we'll see that in semiannual reporting.

12 And all these additions that are in the consent decree
13 of this new equipment, operating under these established
14 operating parameters, that will all be incorporated into a
15 Title I permit, a new Title I permit, a permit-to-install
16 issued by Ohio EPA.

17 And then that permit will be required to be
18 incorporated into their Title V permit so that moving
19 forward they are required to maintain the system and operate
20 it properly.

21 Q. And what mechanisms are available if Republic Steel
22 fails to comply with any of the consent decree requirements?

23 A. Stipulated penalties.

24 Q. And is there a particular event that triggers most of
25 Republic Steel's obligations and deadlines under the

1 proposed consent decree?

2 A. Entry of the CD.

3 Q. Thank you.

4 MS. RICCI: I have no further questions for Mr.
5 Prentice, Your Honor.

6 THE COURT: Thank you.

7 Counsel for Republic, do you have any questions?

8 MR. LEWIS: I do not, Your Honor. Thank you.

9 THE COURT: Sir, I have a few.

10 Can you tell me, you inspected the mill on September
11 of 2021?

12 THE WITNESS: Yes.

13 THE COURT: And you indicated that -- well, let
14 me ask another question. And I'm sorry if I bounce around a
15 bit.

16 So do you inspect or have you inspected other steel
17 mills?

18 THE WITNESS: Yes, I have.

19 THE COURT: How many?

20 THE WITNESS: Five to ten.

21 THE COURT: Just approximately.

22 THE WITNESS: Yes.

23 THE COURT: Five or ten?

24 THE WITNESS: Yes.

25 THE COURT: Leaded steel, this leaded steel, is

1 this unique to Republic or is it produced by other steel
2 mills?

3 THE WITNESS: I believe it is unique to Republic.

4 THE COURT: To your knowledge, they're the only
5 mill that produces this leaded steel alloy?

6 THE WITNESS: To my knowledge, yes.

7 THE COURT: And what is the emission limit, or
8 was, the emission limit pursuant to Republic's SIP?

9 THE WITNESS: I believe it was .09 pounds per
10 hour.

11 THE COURT: And what was it when you did your
12 inspection?

13 THE WITNESS: It would be the same .09 pounds per
14 hour.

15 THE COURT: No, I'm sorry. What was -- one of
16 the violations is excess lead emissions. What was
17 the -- let me back up.

18 Did you do any testing to determine what the level of
19 emissions were at Republic Steel when you did your
20 inspection?

21 THE WITNESS: We did not do any testing, no.

22 THE COURT: So how do you arrive at the
23 conclusion that Republic Steel has exceeded its emission
24 limit?

25 THE WITNESS: We looked at, during degassing

1 events, how much lead is removed from the steel, from the
2 ladle, and the time period in which that is performed.

3 And we applied the stated control efficiency of the
4 existing BTM system and found that they were exceeding the
5 .09.

6 THE COURT: So by how much were they exceeding
7 the .09?

8 THE WITNESS: It escapes me in this moment what
9 our calculations showed.

10 THE COURT: So you can't tell us how much -- how
11 much lead was being emitted in excess of the emission limit?

12 THE WITNESS: In this moment, it escapes me, but
13 we did do that calculation.

14 THE COURT: Do you have it in your papers
15 somewhere?

16 THE WITNESS: I do not.

17 MS. RICCI: Your Honor, we can provide that to
18 you.

19 THE COURT: I would hope so, counsel. I think
20 that would be extremely important.

21 So we don't know how, at least at this point, the
22 extent of the violation in terms of how much the lead, how
23 much lead, just in layman's terms, lead was being emitted
24 into the air.

25 Do you know how long these emissions were occurring?

1 THE WITNESS: We believe these excess lead
2 emissions would have occurred whenever they did a lead
3 degassing event.

4 THE COURT: Do you know how often they were doing
5 these lead degassing events?

6 THE WITNESS: We requested information from
7 Republic on how often these lead degassing events occurred.
8 And we were told that there was a limit to how far back they
9 kept the records.

10 So we were unable to determine how frequent these are.

11 THE COURT: So how far back did the records go?

12 THE WITNESS: I believe through 2020.

13 THE COURT: 2020. So you only had records for
14 one year preceding your visit, according to the complaint at
15 least, October 20, 2020?

16 THE WITNESS: That is correct, yes.

17 THE COURT: We know nothing about what's been
18 transpiring or what emissions, the extent of any emissions
19 from 2004 forward, or thereabouts?

20 THE WITNESS: Correct.

21 THE COURT: Wouldn't that be important to know?

22 THE WITNESS: We did request records to be able
23 to make that determination of how frequently these events
24 did occur but were unable to obtain them.

25 THE COURT: Does Republic have an

1 obligation -- maybe this is a question for
2 counsel -- Republic have an obligation to keep those
3 records?

4 THE WITNESS: They are not.

5 THE COURT: They're not. So they're free to
6 either not disclose, not maintain, or dispose of records
7 that would give us some information about the numbers of
8 emissions?

9 THE WITNESS: Based on my understanding of the
10 permit, they were not required to maintain records of these
11 events, no.

12 THE COURT: What about their complaint? Maybe
13 counsel can educate me then why we have a complaint, we have
14 a claim for failure to perform parametric monitoring and
15 recordkeeping. That wasn't done?

16 THE WITNESS: That is -- should I answer that?

17 MS. RICCI: Go ahead.

18 THE WITNESS: That is a separate requirement in
19 the permit that is not directly related to these degassing
20 events.

21 THE COURT: So why is it a separate claim if it's
22 not related to the degassing event? Just educate me a bit
23 perhaps if you can.

24 THE WITNESS: Sure. So there is monitoring
25 required in the permit for this unit. And the monitoring is

1 to ensure that the vacuum system is engaged when they
2 introduce lead to this -- to the VTD. And that was not
3 performed. And that was included in the NOV.

4 THE COURT: And how often was that to be required
5 to be performed?

6 THE WITNESS: That was daily monitoring.

7 THE COURT: Daily monitoring. Commencing when?

8 THE WITNESS: Excuse me?

9 THE COURT: When was that monitoring supposed to
10 commence?

11 THE WITNESS: From 2004. It's a requirement of
12 their permit.

13 THE COURT: From 2004 forward, daily monitoring
14 was to take place?

15 THE WITNESS: Yes.

16 THE COURT: And as far as you can tell it wasn't
17 performed?

18 THE WITNESS: There was a period of time, one
19 quarter's worth of data, was not recorded. And that was in
20 2020, I believe. Or 2021.

21 THE COURT: Okay. So, again, educate me. So
22 from 2004 until when? I mean, what information do you have
23 in terms of the daily monitoring from 2004 up until 2021
24 when you did the inspection?

25 THE WITNESS: I believe we asked for data going

1 back -- we usually ask for five years.

2 The data we had when we prepared the notice of
3 violation, that was information that we were provided
4 separately from Ohio EPA. And in that dataset, we noted
5 that Republic had failed to perform their required
6 monitoring during this one quarter.

7 THE COURT: What about emissions tests?

8 THE WITNESS: Emissions -- as far as we were
9 informed, emissions testing was never performed at this
10 unit.

11 THE COURT: Never?

12 THE WITNESS: Never.

13 THE COURT: Going back as far back as 2005?

14 THE WITNESS: Correct.

15 THE COURT: Or 2004, excuse me.

16 THE WITNESS: Yes.

17 THE COURT: So over the past, since 2004 to 2021
18 there was no emission testing done?

19 THE WITNESS: Correct.

20 THE COURT: Is it being done now?

21 THE WITNESS: It will be done pursuant to the
22 consent decree once --

23 THE COURT: That wasn't my question. Sorry. Is
24 it being done now?

25 THE WITNESS: No.

1 THE COURT: So there is no emissions testing
2 being conducted now?

3 THE WITNESS: Correct.

4 THE COURT: So we don't know whether lead is
5 being emitted from the plant, from the -- from this process
6 at this point in time?

7 THE WITNESS: We expect there to be lead emitted,
8 but we don't have any testing to show at what rates.

9 THE COURT: So we don't know at what rate,
10 whether it exceeds the .09 limit at this point?

11 THE WITNESS: Correct.

12 THE COURT: So it's ongoing. Is this a possible
13 ongoing violation?

14 THE WITNESS: I would -- I believe that whenever
15 there is a degassing event, that yes, it could continue to
16 exceed their lead emission limit.

17 THE COURT: Based on your testing or your
18 inspection of the plant?

19 THE WITNESS: And the calculations we did
20 following the inspection, yes.

21 THE COURT: All right. Do my questions give rise
22 to additional questions, counsel for the government?

23 MS. RICCI: No, Your Honor.

24 THE COURT: Counsel for Republic, do you have any
25 follow-up questions before the witness steps down?

1 MR. LEWIS: I do not, Your Honor.

2 THE COURT: Thank you.

3 You can step down, sir.

4 (Witness excused.)

5 THE COURT: Counsel for the United States, is
6 there anything else you want to present to the Court at this
7 time?

8 MS. RICCI: Your Honor, as we mentioned earlier,
9 and as Mr. Prentice just explained to you, we moved quickly
10 to address this significant source.

11 And we believe, again, that the civil penalty recovers
12 the appropriate amount for this violation here. And I know
13 that, you know, you have mentioned that civil penalty should
14 be, you know, allocated, and as some of the commenters
15 suggested; however, case law has established that once a
16 civil penalty has been determined, you know, we can't open
17 and renegotiate it. We can't divert money to different
18 programs once the civil penalty has been established and
19 negotiated between the parties.

20 So, you know, the consent decree has to be approved or
21 rejected basically under that standard.

22 I also would just like to mention that the Clean Air
23 Act is not a restitution statute. Its purpose is to, you
24 know, provide clean air and to protect human health and the
25 environment.

1 And Your Honor, I believe this settlement and our
2 enforcement efforts here, the pace at which we moved, the
3 compliance that we are achieving -- and the compliance that
4 we are achieving goes beyond what Republic Steel would be
5 required to do today without this settlement. It would be
6 beyond what they are required to do under their permits. It
7 ensures that they're taking the fullest measures possible,
8 that EPA is going to review and approve to make sure they're
9 properly working to control those excess emissions, and a
10 number of those requirements would not be required without
11 this settlement.

12 THE COURT: What about the fact that at least at
13 this point there may be ongoing emissions? We don't know.

14 MS. RICCI: Your Honor, that's why the consent
15 decree needs to be entered so Republic Steel has this
16 obligation triggered by the consent decree to start this
17 process. And then the Court then -- the United States has
18 enforcement ability to go in and ensure that this is
19 happening, and the Court also would.

20 THE COURT: My apologies. But doesn't
21 that -- does not Republic Steel have the obligation under
22 its permit, irrespective of this consent decree, to monitor
23 its process, make sure they're not exceeding lead emissions
24 in excess of .09?

25 Don't they have an ongoing obligation to do that even

1 before the consent decree?

2 So if they're doing that now, if they are -- I'm not
3 assuming they are. Guessing. We don't even know. But
4 listening to the witness, it would appear -- I want to be
5 cautious. It would appear when they run this process they
6 very well may be still emitting lead in excess of .09 as
7 their permit requires.

8 So the consent decree, irrespective of that, they have
9 an obligation now, under their permit, now to make sure
10 they're not exceeding the limits, right?

11 MS. RICCI: Yes.

12 THE COURT: And they have an obligation to keep
13 records and to let the EPA know when and if they do exceed
14 .09, do they not?

15 MS. RICCI: As far as the records, I don't know
16 if the requirements are as stringent as what we're going to
17 require.

18 THE COURT: Irrespective of how stringent, don't
19 they still have a requirement to keep those records and
20 provide them to you?

21 MS. RICCI: They have a recordkeeping
22 requirement, yes.

23 THE COURT: But even before the consent decree,
24 though.

25 MS. RICCI: Yes.

1 THE COURT: And that's why we're here is because
2 they didn't keep records for years. Right?

3 MS. RICCI: That's one of the reasons, yes.

4 THE COURT: Okay. So my point is that yes, this
5 is an important step here to make sure that they are in full
6 compliance. But that should not require, they should not be
7 waiting for me to approve the decree to be in full
8 compliance with the law.

9 Maybe Republic can address that for me.

10 Because if they choose to continue to emit lead, of
11 course the community ought to know that. After listening to
12 the witness, is someone letting Canton know or the
13 neighborhood around, that, well, these ongoing emissions,
14 there may be ongoing emissions still going on into the air
15 and in the surrounding area around Republic?

16 I would think that's important that they be made aware
17 of that.

18 MS. RICCI: It's my understanding, Your Honor,
19 that the community has been aware of this given the Ohio
20 action, the United States' action, there have been community
21 outreach meetings, and we've had a community outreach when
22 we had our settlement.

23 So -- and it's evident by receiving public comments
24 about the settlement. I know that there has been -- so as
25 far as I'm aware, I know that there have been efforts to

1 make sure that the community is aware of everything. I do
2 not know the full extent.

3 THE COURT: Is that part of the record in front
4 of me somewhere?

5 MS. RICCI: In the public comments, and we
6 address that, and there is mentioning of the state case in
7 the record.

8 THE COURT: Do you have a citation to the state
9 case in terms of -- since it's been mentioned, perhaps that
10 might have some bearing on the issues here.

11 MS. RICCI: I do not have that on hand, but I can
12 get that for you. I have it in my materials, so I can get
13 that to you at the end of this hearing.

14 THE COURT: Thank you. I appreciate your
15 comments and what you have to -- if you want to submit
16 additional information based on my questions, that would be
17 helpful.

18 MS. RICCI: Okay. Thank you, Your Honor.

19 THE COURT: Do you have another presentation you
20 would like to make?

21 MS. RICCI: That is all that I have.

22 THE COURT: Can you reduce the PowerPoint -- I
23 use the old-fashioned term -- the PowerPoint that you
24 presented to the Court? Can you print that off and file it?

25 THE LAW CLERK: I have it.

1 THE COURT: I think my law clerk did. My clerk
2 took the step of printing it off for us.

3 MS. RICCI: Thank you, Your Honor.

4 THE COURT: Counsel for Republic, what
5 presentation would you like to make?

6 MR. LEWIS: Yes, Your Honor. If I may just make
7 presentation to the Court on my own.

8 THE COURT: Sure. You're free to use the podium,
9 or from the table if you have a lot of papers and would like
10 to remain at the table, as long as you use the microphone so
11 the court reporter can hear you, that's fine, too.

12 MR. LEWIS: Great. Thank you.

13 Your Honor, just as an initial matter on behalf of
14 Republic, we appreciate the Court's questions. And we want
15 to answer those concerns. And so that's what we're aiming
16 to do.

17 And it's not lost on me that, sitting here for the
18 last couple of hours, the Court needs to have some questions
19 answered. And I intend to get to work on helping the Court
20 get those questions answered.

21 So I'm committed to doing that.

22 But I thought what I would try to do today is to give
23 a little bit of context because I think I do know some,
24 maybe, more detail than the DOJ does about some of the
25 facts. And so I did want to give Your Honor some context

1 that may be helpful.

2 So just to kind of provide some context, the facility
3 we're talking about, I'll call it the Flexcast
4 facility -- and there is two. There is a Flex and there is
5 a CBCF.

6 So in 2004, the Flex received a permit to emit lead
7 and manufacture leaded steel.

8 At the time, the national ambient air quality
9 standards that Congress had implemented were 1.5 micrograms
10 per cubic meter of air.

11 So I don't know if Your Honor is familiar with the
12 NAAQS or the NAAQS monitoring that goes on, but that is a
13 way to monitor lead emissions throughout the country. And
14 there are monitors all over the place. And that was what it
15 was as of 2004.

16 In 2008, due to some additional scientific data, that
17 was reduced tenfold. And now the current NAAQS metric is
18 0.15. And that's a three-month rolling average measuring
19 the ambient air quality through special monitors set
20 throughout.

21 So I just kind of wanted to provide the Court a little
22 bit of context with this NAAQS monitoring. That's very,
23 very important to what's going on at Republic Steel today.

24 So in 2004, the permit was issued for the Flex.

25 In 2018, Republic received a permit for the CBCF to

1 manufacture leaded steel and to emit lead. It does not use
2 the CBCF today. So no leaded steel is being made at CBCF.

3 And there are provisions that if that ever happens, we
4 have to take a bunch of actions even with this consent
5 decree.

6 But in 2018, the State of Ohio, as part of issuing
7 that permit, set a monitor, a NAAQS monitor, if you will,
8 right outside Republic Steel. So really right across the
9 street from Republic Steel there is a NAAQS monitor, and the
10 results from that NAAQS monitor are public, publicly
11 available.

12 So as of 2018, the lead emissions at Republic Steel
13 were being monitored whether we were making steel at the
14 CBCF or the Flex.

15 Now, the reality is that between 2004 and 2016, the
16 leaded steel production at Flex was very sporadic. There
17 was not a lot of demand for that type of steel and so it
18 wasn't being run on a consistent basis.

19 There were heats being run, but not every heat of
20 steel that Republic makes is made of lead. There is lots of
21 different types of metals.

22 THE COURT: So do you have records of the runs,
23 the steel runs, the runs of leaded steel?

24 MR. LEWIS: Yes. Fair question. I don't know
25 sitting here today, but I know we have records, some records

1 of what we were running back in those day.

2 THE COURT: Do you have records of sales of
3 leaded steel?

4 MR. LEWIS: We may have that.

5 THE COURT: Okay, because that would be
6 important.

7 MR. LEWIS: I'm going to do some work on that
8 because I think that's a fair question.

9 Beginning in -- so between 2016 and 2020, we ran no
10 leaded steel at the Flex. So there was zero Flex steel
11 being run between '16 and 2020.

12 In 2020 --

13 THE COURT: You have records that will support
14 that?

15 MR. LEWIS: Yes. I'll -- I'm going to provide
16 those. But I just wanted to give Your Honor some context
17 just to make sure, because I heard a lot about whether
18 they've been doing this for -- and it's not quite accurate
19 and I want to give Your Honor the facts and the data behind
20 that.

21 Beginning in 2020 the demand for leaded steel started
22 to tick up, and we moved leaded steel operations from CBCF,
23 closed that down, and just ran it from the Flex beginning in
24 2020.

25 THE COURT: You're talking about two separate

1 plants when you use these terms?

2 MR. LEWIS: Facility in the same site.

3 THE COURT: So it's all located in the same
4 location?

5 MR. LEWIS: Right in the same area, yes. Right
6 in the same general area.

7 And in the operation -- setting the Flex operations
8 back up in 2020, that's where we ran into some of these
9 degas events, as part of just getting this operations set
10 up.

11 And, no question about it, and I'm going to provide
12 Your Honor with the publicly available data, we went over
13 the -- so just to orient us a little bit, this starts in
14 about January of 2021.

15 And the NAAQS three-month rolling average is 0.15.
16 And there is a monitor right outside of Republic Steel that
17 is reflected by this blue line.

18 THE COURT: I'm sorry to interrupt. The 0.15,
19 the complaint alleges that 0.09 is the standard.

20 MR. LEWIS: Yes. So the complain alleges that we
21 should have been doing stack testing, like so on-site right
22 on the stack testing, and that that testing, the permit
23 allowed a certain emission of 0.9.

24 I will say that that issue between the U.S. and
25 Republic Steel was contested. What the U.S. felt was that

1 they could use an acute degas event, which is a very small
2 point in time, period of time, to calculate whether or not
3 we violated the 0.9 out of the stack.

4 Our view of the language was that you have to look at
5 a broader time period, it was more of a continuous steel
6 run, and that that ought to be the calculation.

7 And when the EPA came in and did the inspection, and
8 with all due respect, but I do want to let Your Honor know
9 that we did have areas of dispute. That wasn't something
10 that we all agreed on right out of the box. We felt that
11 they had only done a calculation for the very small period
12 of time of a degas event. And we felt that the calculation
13 should have been for a broader period of time. And quite
14 frankly, the permit is a bit ambiguous about that.

15 But what was important is we both sat down and said,
16 okay, you have this concern. We want to make it right.

17 But, importantly, this other NAAQS monitoring is out
18 there to test how much Republic Steel is really emitting
19 into the air.

20 THE COURT: So who does this monitoring?

21 MR. LEWIS: It's a standardized monitor set up by
22 the State of Ohio under some certain rules.

23 The quality standards are set by Congress based on
24 reams of scientific analysis of what can be safely emitted
25 into the air in certain areas.

1 So the blue shows that we started to violate the NAAQS
2 in April of 2021. And this is when we shut down operations
3 right in the fall of 2021.

4 So the NAAQS monitoring had high readings. We were
5 contacted. We shut down operations. And we immediately
6 started taking steps both with the state and with the U.S.
7 EPA to make corrections to make sure that we don't violate
8 those standards because we care about the safety to the
9 community as well.

10 And beginning in October of 2021, with some of the
11 steps that we have taken, including capital investments in
12 securing our facilities, we actually have, for the last 18
13 months, been below the NAAQS standard three-month rolling
14 average through today.

15 And in June of 2022, we actually agreed with the State
16 of Ohio. They asked us to set up a second monitor over by
17 the nearby community so we could also monitor the air there.
18 The thought was that maybe a wind change or something, you
19 know, might blow something and miss the monitor, although
20 it's right across the street from us.

21 So we agreed to a second monitor to be placed in June
22 of 2022 right by the community. And as you can see, Your
23 Honor, the public data shows that we've been under that
24 NAAQS.

25 THE COURT: There are two monitors?

1 MR. LEWIS: Yes. So there is now a monitor right
2 across the street from Republic's operations. And then the
3 nearby community where we had received some complaints,
4 there is a monitor over by them as well.

5 THE COURT: But I'm not a scientist, but I do
6 have a little experience with -- we used to call them smoke
7 stacks. So why would you not put monitors around the area
8 rather than in the immediate proximity of the plant? If
9 there is emissions, if it's similar to the old types of
10 emissions that would come from coal-fired boilers and
11 plants, then the emissions would spread in a wide area. And
12 they may be higher emissions further away from the plant
13 than in the immediate vicinity.

14 So why not place emissions or testing devices in the
15 surrounding area, given -- again, I'm going to go
16 back -- given, as you've seen, Comment 3, the numerous
17 schools that are in that region?

18 Why not place, you know, 10, 15 monitoring stations
19 around the area so we can ascertain for certain where this
20 lead is traveling and who may have been exposed, where it's
21 going?

22 Because I -- you know, I don't want to apply personal
23 experience. The closer you are in to stacks of this nature,
24 you may not get an accurate reading, meaning how far the
25 emissions may have dissipated around the area.

1 MR. LEWIS: The decision to place those monitors
2 is not our decision. It's not a Republic Steel decision.
3 It's a state sort of regulatory decision.

4 But I will say that there is a fairly sophisticated
5 analysis. And one that's way over my head on calculations
6 that they do on where to place those monitors to be in the
7 most effective places to measure the emissions in the area.

8 THE COURT: Well, is the U.S. EPA involved in
9 that process at all?

10 MR. LEWIS: I'm actually not sure about that.

11 THE COURT: Did they come to you and say, as part
12 of this consent decree going forward we're going to place
13 monitoring devices around the community because we want to
14 be sure and make certain that we don't have any concerns
15 about lead emissions into the surrounding area?

16 MR. LEWIS: That wasn't part of the consent
17 decree discussions that I was familiar with.

18 THE COURT: So we don't have any provisions in
19 the consent decree for monitoring outside the
20 immediate -- when I say the immediate area, the surrounding
21 area where the schools and all the other concerns are, the
22 neighborhoods, etcetera, around the area?

23 MR. LEWIS: Well, I think the community monitor
24 does address those concerns. There was fairly detailed
25 analysis done before that monitor was placed where it was.

1 And the community concerns were what prompted the state to
2 place the second monitor.

3 THE COURT: Do you know where it's at, how far
4 from the plant it might be?

5 MR. LEWIS: I should know this. Maybe a mile.

6 But I can get that detail for you, Your Honor, give
7 you a map.

8 THE COURT: That would be helpful. There is
9 three elementary schools within one mile of the Republic
10 Steel plant.

11 MR. LEWIS: Understood. And I think, honestly, I
12 think the Court might also benefit from how the state
13 determined the location of that monitor.

14 THE COURT: Yeah, and according to Comment 3,
15 there is 24 schools or licensed daycare centers also within
16 that same general radius of the plant.

17 MR. LEWIS: But what we do know is that the
18 monitoring that has been set up that was calculated to
19 gather the emissions that are actually coming from Republic
20 have been under 0.15 since October of 2021. That we -- I
21 mean, that's what we do know.

22 THE COURT: I guess someone will have to educate
23 me because if the permit says .09 and you're using the .15,
24 then that's an issue.

25 MR. LEWIS: Right. So let me try to explain the

1 difference between the 0.9. The 0.9 is an on-site
2 on-equipment test, sort of out-of-the-stack test, if you
3 will.

4 And again, it's more sophisticated than that, but it's
5 testing the actual piece of equipment, the actual facility.

6 These air monitors are testing the air around Republic
7 Steel. So they're not testing the actual piece of
8 equipment. They're testing the air generally.

9 I mean, there could be lead sources from other places.
10 There really aren't any other manufacturing facilities
11 anywhere else around, but there could be.

12 The point being that the real important point is the
13 0.9 is really designed to make sure that we stay under this.

14 The permit is designed to not violate the NAAQS air
15 quality standards because we know from scientific data and
16 congressional study that if you stay under this, the
17 community, the surrounding community will be safe.

18 You can't have zero lead emissions -- or I guess we
19 could, but we don't. But if we stay under this in the area,
20 it's going to be okay. And that's the important point.

21 And the 0.9 is really designed to kind of get to that
22 standard.

23 THE COURT: And what predates June of '21?

24 MR. LEWIS: January '21, yes.

25 So that's roughly -- this is to kind of reflect the

1 Flexcast, I guess, emissions.

2 THE COURT: What predates it though? Are there
3 emissions prior to this date?

4 MR. LEWIS: There were emissions. It started to
5 be monitored in 2018. And when the CBCF was operating, I
6 believe there were two instances of exceeding the NAAQS
7 standards by the CBCF which isn't part of this violation.

8 And eventually CBCF was shut down.

9 THE COURT: Well, counsel says there was 22 and
10 possibly 33 emissions that exceeded the permit.

11 MR. LEWIS: Yes. And I think if I'm
12 correct -- and I can let the government correct me if I'm
13 wrong -- they're calculating that as a degas event.

14 So the government's view is that every time we have a
15 degas event, we exceed the 0.9. We honestly disagree with
16 that because we don't think that's the right measurement.
17 But we have actually eliminated degas events in our facility
18 already. We're already there. We've eliminated degas
19 events and minimized them. And that is for sure why we've
20 been staying under this 0.15. We've fixed our operations.

21 And we already made one of the required upgrades in
22 the consent decree which was kind of due by September of
23 2022. We've made that. And that's reflected here. In
24 August of 2022 we installed demisters in the cooling tower.
25 That was one of the provisions. And, you know, there was at

1 least some data to suggest there was an impact even with
2 just that one step.

3 The other thing, Your Honor, that I just want to make
4 sure of -- and I have the amended consent order for
5 preliminary injunction that's been entered in the state
6 court proceeding, so we're actually operating under a
7 preliminary injunction from the state, and that requires
8 certain actions to be taken if we get even close to this
9 0.15.

10 And if we start to approach it -- for instance, in
11 August of 2022, we started to approach the 0.15, and under
12 the preliminary injunction order we were required to curtail
13 production until we were able to investigate and reduce.

14 THE COURT: So what did -- I'll have to read it.
15 How did the .15 standard, is that in this decree that you
16 have, the State of Ohio?

17 MR. LEWIS: Yes.

18 THE COURT: How did they get there in the face of
19 the permit which purportedly is .09? And I'm referring to
20 the complaint.

21 MR. LEWIS: Yes.

22 THE COURT: So how did the State of Ohio get to
23 .15 when according to the complaint the permit is .09?

24 MR. LEWIS: So the state is looking at the air
25 quality and how that is being measured and requiring us to

1 take steps whenever the air quality at either of the
2 monitors, either the one by the community or the one across
3 the street, start to reach certain levels. So they're
4 looking at the actual air quality.

5 The 0.9 is just the calculation of the test inside the
6 facility that the EPA is taking issue with.

7 THE COURT: Go ahead.

8 MR. LEWIS: Okay. Sorry. I wanted to make sure
9 Your Honor was able to -- so what I wanted to make clear,
10 and again, I think we need to build a better record for Your
11 Honor on this, and that's what I'm going to do after today
12 if given the opportunity to do that, this isn't a situation
13 where there have been hugely high levels of lead being
14 emitted from Republic Steel for decades and decades. That
15 isn't the scenario here.

16 The leaded steel production was sporadic for many
17 years, nonexistent for some years, and picked up in 2020.
18 And there have been air quality monitors in the area that
19 when those were triggered, immediate action was taken.

20 THE COURT: Well, here is my problem. How do we
21 know how often we've had these emissions? Because we don't
22 have, according to the government, we don't have records for
23 many, many years.

24 So how are we to know how many emissions there are, or
25 how many -- I'll use the word discharge -- how many

1 discharges there have been and at what levels? How are we
2 going to know that if there has been no records kept?

3 MR. LEWIS: Well, the records that have been kept
4 since 2018 reflect the air emissions which is the actual
5 emission.

6 THE COURT: 2004 to 2018?

7 MR. LEWIS: 2004 to 2018, we do have some
8 records. But there was a quarter where we could not find
9 some parametric monitoring records. That's the monitoring
10 that's supposed to be done to make sure that we're staying
11 under the emissions. And we self-reported that.

12 And obviously that's become part of the consent
13 decree, that those recordkeeping functions need to be
14 tighter.

15 THE COURT: Perhaps I missed it. I think -- did
16 not the witness say there was no emissions tests done from
17 2004 forward until 2020, 2021?

18 MR. LEWIS: The test that wasn't done
19 was -- there is various testing and procedures that need to
20 be followed. There is parametric monitoring, stack house
21 procedures. The one test that hadn't been done was what's
22 called a stack test.

23 And again, there was a debate about the methodology to
24 conduct a stack test to make sure you get accurate
25 information. And we debated that with the United States.

1 And that's how we arrived at this consent decree.

2 THE COURT: Was the testing done or not?

3 MR. LEWIS: There was no stack test done.

4 THE COURT: So cut to the chase, you weren't
5 doing the testing that was required for all that period of
6 time.

7 MR. LEWIS: There was no stack test done.

8 THE COURT: So that would deprive us from having
9 information about the emissions or level of emissions,
10 right?

11 MR. LEWIS: I don't think so.

12 THE COURT: You don't think so?

13 MR. LEWIS: I think you can look at other data,
14 the monitoring data, obviously the air emission monitoring
15 data.

16 There is other sources of information.

17 And the stack test is an extremely difficult test to
18 get accurate readings, and that was the point that we had
19 made to the government the whole time.

20 So that's how we arrived at this consent decree.

21 THE COURT: So go ahead. Anything else you want
22 to add?

23 I'm looking or waiting to hear you discuss some of the
24 issues that were raised by the commentators in terms of the
25 comments that were submitted about the community and harm to

1 the community and issues, the community-related issues as it
2 relates to these discharges over these many years.

3 MR. LEWIS: Sure. So I think we need to make a
4 better record of the data such as maybe more of this
5 monitoring data to show that if we're under a government
6 studied standard of air quality, that that is by nature not
7 an unsafe emission, number one.

8 Number two, we do know that the county has performed
9 blood level testing of individuals. And I'll try to get my
10 hands on that data and submit it to the Court or at least
11 reports of that data. But there were no reported elevated
12 blood levels, blood lead levels.

13 THE COURT: Do we know how many tests were done?

14 MR. LEWIS: That's what I need to get. So I'm
15 going to need to submit that information to the Court.

16 THE COURT: So directly, why is it that we have
17 to rely upon the county to do this type of testing? Why is
18 that not part and parcel of this decree, that we do things
19 to make sure the community is safe, that there has been no
20 undue harm, that there has been no lead emissions that would
21 cause any damage to the health, safety, and welfare of the
22 community?

23 Why is this not something that's part and parcel of
24 the decree, that the government doesn't insist on, that
25 Republic doesn't step up and say we're going to provide the

1 appropriate funds to see that these issues are taken care
2 of?

3 MR. LEWIS: Well, in my view the consent decree
4 does address public safety.

5 THE COURT: How?

6 MR. LEWIS: And public health.

7 THE COURT: How?

8 MR. LEWIS: Because it looks at the available
9 information that we do have and makes sure that on a going
10 forward basis it's going to improve. We're already showing
11 huge significant improvements in the air around the
12 facility.

13 THE COURT: I'm sorry to interrupt, sir. Going
14 forward, I understand what you're proposing going forward as
15 to a good faith attempt to remedy the problem, going
16 forward.

17 But as the commentators have stated in their letters,
18 which are compelling, what about the harm in the past? What
19 studies have been done? What testing has been done? What
20 efforts have been made to see whether or not these releases
21 over many years -- you want to point, as certainly it's
22 appropriate, you want to be point me to a specific window of
23 time. But arguably, these releases have occurred for a
24 period of time over many years, the extent of which we do
25 not know.

1 And so why not make sure that we take care of these
2 issues as raised, any contamination caused by previous
3 emissions, any health issues that may have been caused by
4 these previous emissions.

5 We just don't know and no steps have been taken to try
6 to address it.

7 In cases of this nature, by way of example, if there
8 is a -- I don't want to use the word compare. There is any
9 number of cases where there is contamination. There has
10 been inappropriate releases, either air, water, discharges
11 that cause harm to the community, harm to landowners, harm
12 to farmers, harm to others.

13 And is it not appropriate for those who may have
14 violated their permit or violated the law, Clean Water Act,
15 Clean Air Act, to step up to the plate and do the things
16 that need to be done to ensure the safety of the community?

17 And the points made, with all due respect -- and I've
18 had two of these cases now -- where the community at large
19 around the area where the EPA is involved, is a poor area.
20 It's a poor, very poor area. And you've got -- here you've
21 got a community of color and a lot of poverty.

22 And we're really doing nothing, as the letter states,
23 to make sure that their interests are protected. That's
24 part of what this is all about, right?

25 MR. LEWIS: Sure, I agree.

1 THE COURT: Protecting the health of the
2 community.

3 MR. LEWIS: I agree.

4 THE COURT: Children, asthmatics, the elderly,
5 seeing to it there is no problem.

6 We just don't know because no steps have been taken,
7 and I read this -- and I'll shut up -- but I read this and
8 as I listen to you, and it's basically, well, we'll let the
9 county, Stark County, handle that. We'll let them handle
10 that.

11 Or, as I read the papers, well, maybe in the future,
12 the EPA, maybe we'll do something in the future to address
13 the problem.

14 Well, in my view, that's not really the way it should
15 be done. With all due respect, it's not the way it should
16 be done. It's not that we're just going to ignore the
17 community at large -- we're not going to ignore what
18 happened in the past.

19 As the letter states, "The community deserves to be
20 protected from the contamination caused by previous
21 emissions, in addition to the settlement."

22 You're going to minimize future emissions, hopefully,
23 but that doesn't resolve the problem or the issue of what's
24 happened in the past and what if any damage has been done to
25 the health, safety, and welfare of the children and those

1 around the area.

2 And I don't know -- you're going to tell me, I assume.
3 Somebody is going to give me information about a couple of
4 things.

5 Number one, what was the extent of the testing that
6 was done down in Stark County? What type of notice was
7 given? Did somebody send out a notice to the schools in
8 that area and say, by the way, you should all be aware that
9 there has been a release of lead into the air by Republic
10 Steel, and it occurred on these dates and times and over
11 these number of years, and you should be aware of it? And
12 you should notify parents. We should set up testing. We
13 should see that all your children should be tested to make
14 certain that your children haven't suffered from any adverse
15 affects and harm from these lead -- these lead releases.

16 Same with landowners. This all should be tested, make
17 sure there is no lead in the soil, or undue amounts of lead
18 in their soil.

19 It's all -- again, should be part and parcel of all of
20 this in my view.

21 To simply say, well, we're going to address it going
22 forward, well, you're required to do that as a matter of law
23 now and make sure there is not excess lead going into the
24 air. That should be ongoing. It should be in place now.
25 And reporting should be done now, irrespective of the

1 decree. But as far as what happens -- has happened in the
2 past, I don't see the parties providing any assurance to the
3 Court that you're going to address that, as the commentators
4 have asked for, and rightfully so, and in great detail, I
5 might add.

6 And they make a compelling case in their letters. And
7 the response to it has been inadequate. It's been, well, we
8 may in the future address it. Or, we really don't need to
9 address it.

10 And I don't see that as being the appropriate response
11 to, again, what I've already stated.

12 So, go ahead, counsel, if you want to add anything,
13 you may.

14 MR. LEWIS: I hear you, Your Honor. I would ask
15 that we have the opportunity to submit additional
16 information to the Court to address the Court's concerns.
17 And I, you know, I want a shot to do that.

18 THE COURT: I would like to know exactly how much
19 money -- the general revenue of Republic Steel, number one,
20 over the last five years.

21 I would like to know also, as well, the revenue that's
22 been produced -- generated from the production of this
23 leaded steel alloy. The government's witness says you're
24 the only plant that produces it, at least to his knowledge.
25 And so I would like to know how much -- what the profits

1 have been from leaded steel over the course of the last five
2 years. We'll use that as well.

3 And then you can also -- I'll do some research to see
4 what the extent of my authority is. You can explain to me
5 what it is that binds my hands in terms of the \$990,000
6 penalty, how that is sufficient -- we'll use the term that
7 we use in criminal law -- sufficient but not greater than
8 necessary to meet the purposes of the law. That is, I would
9 think deterrence would be an important one to make sure that
10 anyone else who wishes -- or may find themselves in
11 violation of their permit would be deterred from that
12 ongoing -- or that problem.

13 So you can educate me about that issue as well.

14 Anything else, counsel?

15 MR. LEWIS: Not here, Your Honor.

16 THE COURT: Thank you.

17 Anything else anyone wishes to add?

18 MS. RICCI: No, Your Honor.

19 THE COURT: Timeframe you would like for any
20 supplemental submissions, you may do that.

21 Do you wish to file anything supplemental?

22 MR. LEWIS: I certainly would like to, Your
23 Honor.

24 I don't want to delay, but 45 days?

25 THE COURT: That's fine, counsel. You

1 can -- certainly, you may do that.

2 Again, I would hope the EPA is enforcing the statutes
3 as they are, the Clean Air Act statutes. I know there is
4 some argument that, Judge, you've got to do this right away.
5 Otherwise there is going to continue to be emissions. I
6 hope that's not a problem.

7 MS. RICCI: Well, Your Honor, as we stated today,
8 until entry of the consent decree, we cannot enforce this
9 and Republic Steel is not going to start installing the
10 compliance requirements.

11 So I mean, I would request maybe that we have a
12 shorter time period to supplement the record.

13 THE COURT: So your expert can't go out and
14 inspect the premises?

15 MS. RICCI: He can.

16 THE COURT: He can go out and test the emissions,
17 the level of emissions, can he do that?

18 MS. RICCI: He can -- testing the level of
19 emissions, they would have to be running certain operations.
20 I don't know the answer to that specific question.

21 But I'm just saying, the entry of the consent decree
22 is going to be what triggers their obligations to start
23 doing certain compliance requirements, having us have that,
24 you know, ability to enforce those mechanism and come to you
25 if it's not happening.

1 I just -- that's my only point I wanted to make, and
2 that, you know, therefore if you want us to submit
3 additional information to supplement the record, I would
4 like that to be a shorter time period just so we can have,
5 you know, finality on this, you know, proposed --

6 THE COURT: Counsel, I'll be blunt with you. If
7 I were to pass judgment on this today, I would deny the
8 request. I don't think it meets the requisite standard in a
9 number of ways. And I can write on it and spell it out for
10 you if you would like.

11 But I have grave concerns about any numbers of things
12 that have been -- in the papers and what I've heard here
13 today. I've have gave concerns about this and whether it
14 meets the requisite standard. Gave concerns.

15 And I can write on it. And I need to do some research
16 about the full extent of, you know, what I need to consider
17 in deciding the approval of this.

18 I know it's rare that these matters are not approved
19 out of hand, but I take a different view. I think I have an
20 obligation to review these matters carefully, considering
21 the nature of the harm and the nature of the comments from
22 people, individuals that I think have the interests of the
23 community at heart.

24 And I think that's important.

25 This is not a -- I'm not going to rubber stamp it. I

1 think some judges would, to be blunt. So it's not going to
2 be a rubber stamp.

3 I'm going to analyze it all carefully and I'm going to
4 look carefully at everything I've addressed here today.

5 MS. RICCI: Yes, Your Honor.

6 THE COURT: And just so in the interest of full
7 disclosure, the responses to the commentators has been
8 woefully inadequate. Woefully inadequate.

9 You haven't really addressed it straight out as one
10 would hope you would do.

11 And so you can address them if you would like. If you
12 do not, then I'll grant you 45 days. And then we will put
13 up an order once we have it. The criminal docket, we're
14 backlogged with criminal trials because of the pandemic.
15 We'll deal with it.

16 I do note, I do see in the back of the courtroom a
17 representative who submitted one of the comments. So
18 counsel who did submit one of the comments on behalf of the
19 community, Legal Aid, he's here. If he wants to make a
20 supplemental submission based upon what he has heard, I will
21 certainly accept it. If he chooses not to do so, that's
22 certainly his right as well.

23 So we'll have this all typed up and transcribed, and
24 then we'll take the matter under advisement after we have
25 all the submissions, anything else you want to submit,

1 counsel for the government. You're free to do that as well,
2 counsel for the defendant.

3 MR. LEWIS: Thank you, Your Honor.

4 THE COURT: 45 days. Again, make sure I have
5 annual revenue for Republic Steel as well as the
6 documentation regarding the amount of sales of this leaded
7 steel as described so I can consider whether or not that is
8 an economic benefit that I may consider as part of the
9 evaluation of the case.

10 I know that may be something of first impression, but
11 we will consider it.

12 Anything else?

13 MR. LEWIS: Nothing here, Your Honor.

14 THE COURT: Thank you very much. We appreciate
15 it. We'll look forward to seeing your submissions.

16 Everyone have a good afternoon. Hopefully the weather
17 will turn.

18 (Proceedings concluded at 12:40 p.m.)
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I N D E X

DIRECT EXAMINATION OF DAKOTA PRENTICE

37

BY MS. RICCI

C E R T I F I C A T E

I certify that the forgoing is a correct transcript from the record of proceedings in the above-entitled matter.

S/Caroline Mahnke5/10/2023

Caroline Mahnke, RMR, CRR, CRC

Date